TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 46

ARTHUR M. MANIGAULT, APPELLANT,

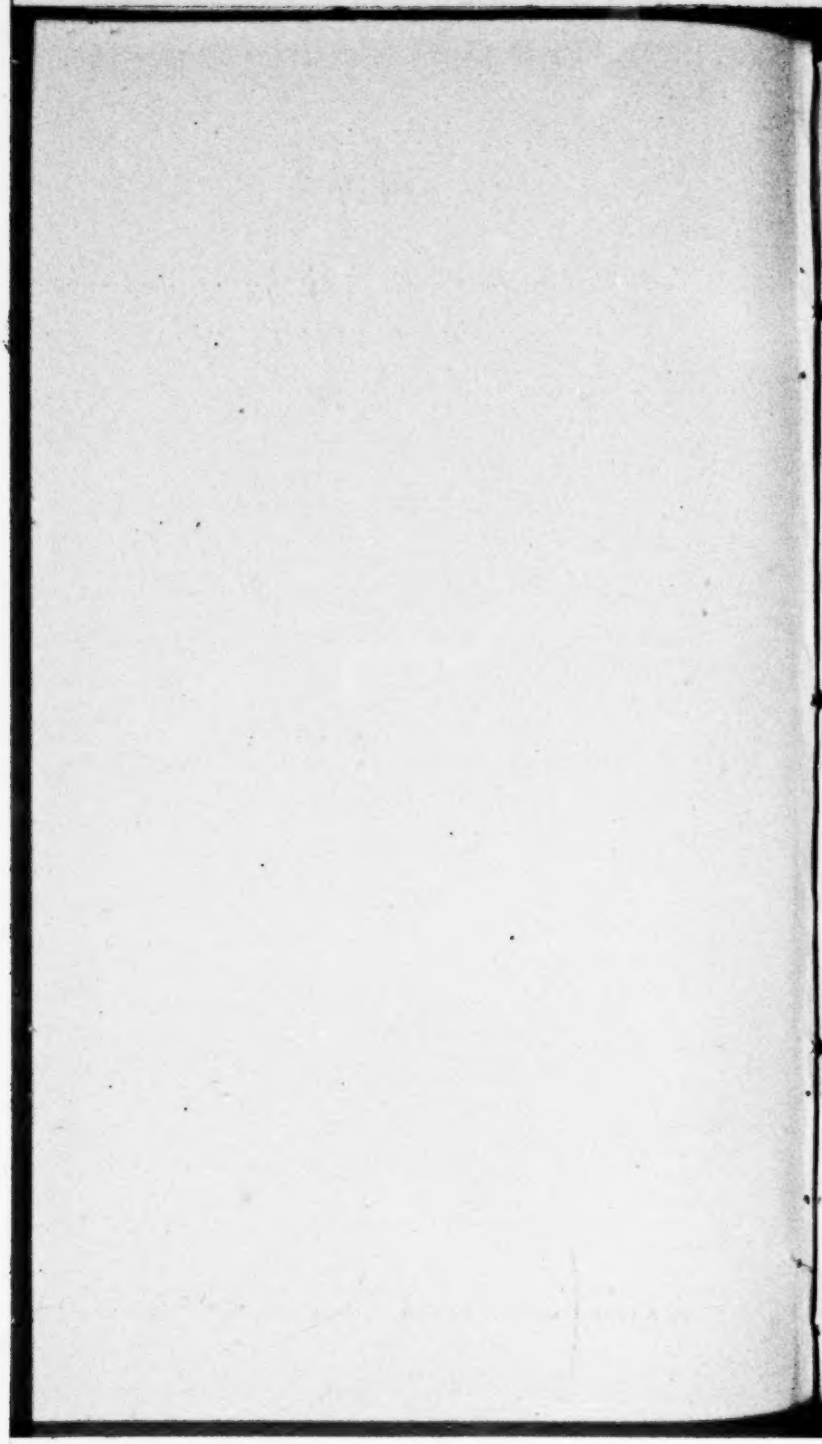
vs.

A. A. SPRINGS AND ST. J. M. LACHICOTTE, COPARTNERS IN BUSINESS UNDER THE FIRM NAME OF S. M. WARD & COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

FILED JUNE 6, 1906.

(19,390.)



(19,390.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 290.

ARTHUR M. MANIGAULT, APPELLANT,

vs.

A. A. SPRINGS AND ST. J. M. LACHICOTTE, COPARTNERS IN BUSINESS UNDER THE FIRM NAME OF S. M. WARD & COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 16, 1905.

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1 TRANSCRIPT OF RECORD.

THE UNITED STATES OF AMERICA, District of South Carolina, } *To-wit:*

In the Circuit Court, Fourth Circuit. In Equity.

At a circuit court of the United States for the fourth circuit in and for the district aforesaid, on the first Tuesday in March, A. D. 1904, before the Honorable Charles H. Simonton, circuit judge of the United States for the fourth judicial circuit, holding said court according to the form of the act of Congress in such cases made and provided, among other were the following proceedings, to wit:

ARTHUR M. MANIGAULT, Complainant,
against
A. A. SPRINGS and ST. J. M. LACHICOTTE, Copartners in Business under the Firm Name of S. M. Ward & Co., Defendants.

Bill of Complaint.

2 Bill of Complaint.

Filed March 4, 1903.

UNITED STATES OF AMERICA, District of South Carolina.

In the Circuit Court. In Equity.

ARTHUR M. MANIGAULT, Complainant,
vs.
A. A. SPRINGS and ST. J. A. LACHICOTTE, Copartners in Business under the Firm Name of S. M. Ward & Co., Defendant-.

To the honorable the judges of the circuit court of the United States for the district of South Carolina:

Arthur M. Manigault of North Santee in Georgetown county, and a citizen of the State of South Carolina brings this his bill against A. A. Springs and St. J. M. Lachicotte, both of Georgetown county, in the State of South Carolina, and citizens of the said State of South Carolina, copartners in business under the firm name of S. M. Ward & Company, and thereupon your orator complains and says:

1. That this cause is a suit of a civil nature in equity where the matter in dispute exceeds, exclusive of interest and costs, the sum

of two thousand dollars, and arises under the Constitution and laws of the United States as hereinafter set forth.

II. That your orator is the owner in fee of a valuable rice plantation situate in Georgetown county on North Santee river
3 bordering partly on Minim creek, and lying in part just opposite the mouth or entrance of Kinloch creek in said county, and that your orator is further the owner in fee of a valuable mill site situate on the Santee river on the waters of Bluff Back creek, a branch of said Kinloch creek, as will more fully appear by the map or plan of the portions of said creeks with the lands adjacent thereto hereunto annexed as Exhibit "A."

III. That the said Kinloch creek is a navigable stream or water highway, and has always been capable of navigation by vessels therefrom into Santee river, and thence into the Atlantic ocean and to all parts of the United States or the world. That Kinloch creek is not only a navigable water-highway, but it connects at one point with the main State road or highway leading down from the upper portion of the State down Santee river, and that there is a public landing at the point at which Kinloch creek connects with said State road, so as to make a continuous highway from the same over the navigable waters of Kinloch creek to the main State road and thence to the upper country.

IV. That heretofore, to wit, in August 1898 this plaintiff was the owner of the said valuable lands lying opposite the mouth of Kinloch creek, and that F. W. Ford was the owner of certain rice lands bordering on Kinloch creek and lying at the upper end thereof. That at that time the said defendants hereto had erected a dam across Kinloch creek, which dam was an obstruction to the navigation thereof, and to the free ingress and egress of the waters therein and therefrom, and that your orator and the said F. W. Ford conceiving themselves injured and obstructed by said dam across said navigable creek both as to the injury to their planting lands, and the obstruction to the use of said creek—desired the same immediately removed by the said defendants herein as an injury and obstruction as aforesaid. That after long negotiation the said defendants herein in consideration of the deferring of the removal of said
4 obstruction then existing until 31st December 1898, entered into an agreement under seal, wherein and whereby it was agreed that said obstructions in said Kinloch creek, to wit, the dam across the same, should be by the said Arthur M. Manigault and F. W. Ford, their agents, servants or employees removed entirely after the 31st December 1898, and said creek should be kept open and free and clear from any obstruction, without any let, hindrance, objection or molestation whatsoever in act or procurance by the defendants hereto, their servants, agents or employees, as will appear by a copy of said deed so executed under seal, hereto annexed as Exhibit "B." That in accordance with the terms of said agreement said obstruction was allowed to remain across said Kinloch creek until 31st December 1898, when the same was thereafter removed

by the said A. M. Manigault and F. W. Ford, and has so continued removed ever since.

V. That thereafter and this agreement being of force and relied upon by your orator, your orator purchased a mill site on Santee river which had been formerly occupied as a rice mill, but which could be used for the purpose of a rice or of a saw mill, and one of the main elements in the value of which is that it has water connection with Bluff Back creek, but inasmuch as Bluff Back creek is accessible only through Kinloch creek, the value of said mill site by reason of its accessibility through Kinloch creek depends upon said Kinloch creek being kept open and unobstructed and any dam or obstruction in Kinloch creek will not only prevent your orator from access to the said public landing on the State road, if he so desires, from his plantation on Santee river through Kinloch creek, but will also prevent access to the rear of his mill site on Santee river through Bluff Back creek, and this will entirely destroy the availability of said site for a saw mill. That in addition thereto the erection of a dam across Kinloch creek, by preventing the inflow of the rising tide that passes from Santee river through Minim creek, and which would otherwise have access and overflow over the whole of Kinloch creek, and its branches will cause the water to fall back to some extent upon the banks of your orator on his plantation just opposite the mouth of Kinloch creek on Minim creek, so as to compel your orator to raise his banks to his great damage, much exceeding in all the sum of two thousand dollars.

VI. That the General Assembly of the State of South Carolina at its last session has just passed an act which has been approved by the governor, to authorize the said A. A. Springs and St. J. M. Lachicotte, defendants herein, to construct and maintain a dam across Kinloch creek, notwithstanding and in direct contravention of the deed and covenants under seal, entered into by the said defendants hereto in their agreement hereinbefore referred to, and annexed hereto as Exhibit "B." That the damming and closing of said Kinloch creek by said act is attempted to be authorized and permitted for the mere private purposes and for the greater financial improvement of the private agrocultural lands of said defendants hereto, and is not authorized or attempted to be authorized for the purposes of improving navigation or for any public use or purpose whatsoever. That a copy of the said act is hereto annexed as an exhibit, to wit, Exhibit "C," to this bill of complaint.

VII. That the enacting of the said law is the passing by the State of South Carolina of a law impairing the obligation of a contract by annulling or attempting to annul and avoid the contract and covenant entered into by the said defendants hereto in and by their said agreement hereinbefore referred to, and annexed as an exhibit, and is the passing of a law in contravention of the provisions of article 1, section 10 of the Constitution of the United States.

VIII. That at the time of the acquisition of the said properties

by your orator, to wit, both his plantation as aforesaid on
6 Minim creek, and also his mill site on Bluff Back creek, there was and still is a provision of the constitution of the State of South Carolina, to wit, section 28 of article I—"All navigable waters shall forever remain public highways free to the citizens of the State and the United States, without tax, impost, or toll imposed," and also section 1st article XIV of the constitution of South Carolina, that "All navigable waters within the limits of the State shall be common highways and forever free, as well to the inhabitants of this State as to the citizens of the United States," which right or privilege is part of the value of the lands and properties of your orator hereinbefore referred to; and that the damming of Kinloch creek, and its consequent closing as a navigable water highway is a destruction of part of the value of the said properties of your orator given to him at the time of his acquisition thereof by the constitution of the State of South Carolina, and the passage of the said act by the General Assembly of the State of South Carolina is an impairment of the obligation of the contract so entered into by your orator when he was permitted to acquire said properties, and is the taking of the property of your orator without compensation therefor, and is the depriving your orator of his property without due process of law in contravention of section I of article XIV of the amendments to the Constitution of the United States. That your orator as the owner of his said mill site abutting on Bluff Back creek, has as part of his private property the right of a riparian owner, to wit, the right of an unobstructed passage to and from his said property on and over the waters of Kinloch creek, and that it is provided by the constitution of South Carolina, in section 17, article I, that "Private property shall not be taken for private use without the consent of the owner nor for public use without just compensation being first made therefor."

And that the closing of Kinloch creek by the passage of the said act, and the loss of access thereby to his said mill site, and the consequent damage to the lands of your orator lying just oppo-
7 site and in immediate conjunction to the mouth of Kinloch creek, is the taking of the property of your orator without his consent, and without compensation therefor, in contravention of the provisions of section 10, article I of the Constitution of the United States, and of section 1st of article XIV of the amendments to the Constitution of the United States.

IX. That in and by section 34, article III of the constitution of South Carolina, it is declared that the General Assembly of the State of South Carolina shall not enact local or special laws concerning the following purpose among others, to wit, "to lay out, open, alter or work roads or highways" which provision is by section 29 of article I of said Constitution declared to be mandatory and your orator shows and alleges that the said act so attempted to be enacted by the General Assembly allowing Kinloch creek to be dammed as aforesaid, is a local and special law altering a highway, to wit, a

navigable stream and is therefore null and void as in contravention of said provision of the Constitution.

X. That in and by section 31, article III, chapter II of the Code of Laws of South Carolina 1902, it is declared that no bill for the granting of any privilege or immunity or for any other private purpose whatsoever shall be introduced or entertained in either house of the General Assembly except by petition to be signed by the person or persons seeking such privilege, immunity or other private grant or relief; and in and by section 34, of said article and chapter last above mentioned, it is further declared that in every case other than that of a charter or incorporation, the petition shall set forth fully and distinctly the merits and particulars of the case, and if the same shall in any wise affect the rights of others directly who reside in this State such petition shall be accompanied with proof that the parties who may be affected thereby have had sixty (60) days' notice of the presentation of such petition before such petition is presented and also that notice of the intention
8 of the petitioner or petitioners to make such application has been published in a newspaper having the largest circulation in the county where the privilege or immunity is to be enjoyed, once a week for at least three weeks, the first of which publication shall be at least sixty (60) days before such petition is presented. And your orator shows and alleges, that no petition signed by said defendants hereto, or by any one on their behalf, was ever presented to the General Assembly seeking the privilege of damming Kinloch creek as authorized and permitted in said act, nor was any notice of any such petition or of any intended application for such privilege ever given to your orator, although residing in this State and directly affected thereby, nor was any publication of any such petition, or intended application ever made in any newspaper published in Georgetown county. Wherefore, as your orator shows and alleges said act to permit the damming of Kinloch creek by the defendants having been attempted to be passed in direct contravention of the said provisions of law, is null and void.

XI. That the said A. A. Springs and St. J. M. Lachicotte, defendants herein, are as your orator is informed and believes and hereby so alleges and charges, on the point of immediately taking advantage of the alleged authority given by the said act of the legislature, and of erecting a permanent dam and obstruction across Kinloch creek, the erecting of which will be at once to put an end to your orator's use thereof, and to permanently injure and affect the value of his property irreparably and beyond the power of your orator to prevent, and to deprive your orator of his property as aforesaid.

XII. In consideration whereof, and forasmuch as your orator is remediless save in a court of equity, and to the end that the said defendants may if they can answer the charges and allegations of this bill of complaint (but nor under oath answer under oath
9 being hereby waived from each of them) as if the said defendants were hereto again specifically interrogated, your

orator prays that the said defendants, and each of them, and the servants, agents, and employees of them or either of them be each and all restrained and enjoined from in any wise damming, diking or obstructing or procuring to be dammed, diked or obstructed the said Kinloch creek or any part or branch thereof, and be also restrained and enjoined from in anywise interfering with or preventing your orator, his servants, agents or employees from opening and keeping open all and every part of the said creek, so as to free and clear the same from all or any obstructions without any let, hindrance, objection, delay or molestation whatsoever in act or procurance by the defendants herein, their servants, agents or employees and that in the meantime and until the final judgment and decree of this court, a restraining order be issued to the said defendants restraining them in the manner and form as hereinbefore prayed, and that your orator may have all such other and further relief as the nature of the case may require, or that equity can afford.

XIII. May it please your honors to grant unto your orator as well an injunction as above prayed for, as also a writ of subpœna to be issued out of this honorable court directed to the said A. A. Springs and St. J. M. Lachicotte, defendants herein, commanding them and each of them under a penalty to be therein named and upon a day to be therein fixed, to be and appear in this honorable court and answer the premises, and abide the further order and decree of this court herein.

And your orator will ever pray, &c.

MITCHELL & SMITH,
Solicitors for Complainant.

10 STATE OF SOUTH CAROLINA, }
Charleston County. }

Personally appeared Arthur M. Manigault, complainant above named and having been first duly sworn made oath that he hath read the foregoing bill of complaint and that the matters of fact therein stated are true so far as the same are stated of his own knowledge, and so far as the same are stated upon the information of others he believes the same to be true.

A. M. MANIGAULT.

Sworn to before me this 4th day of March, A. D. 1903.

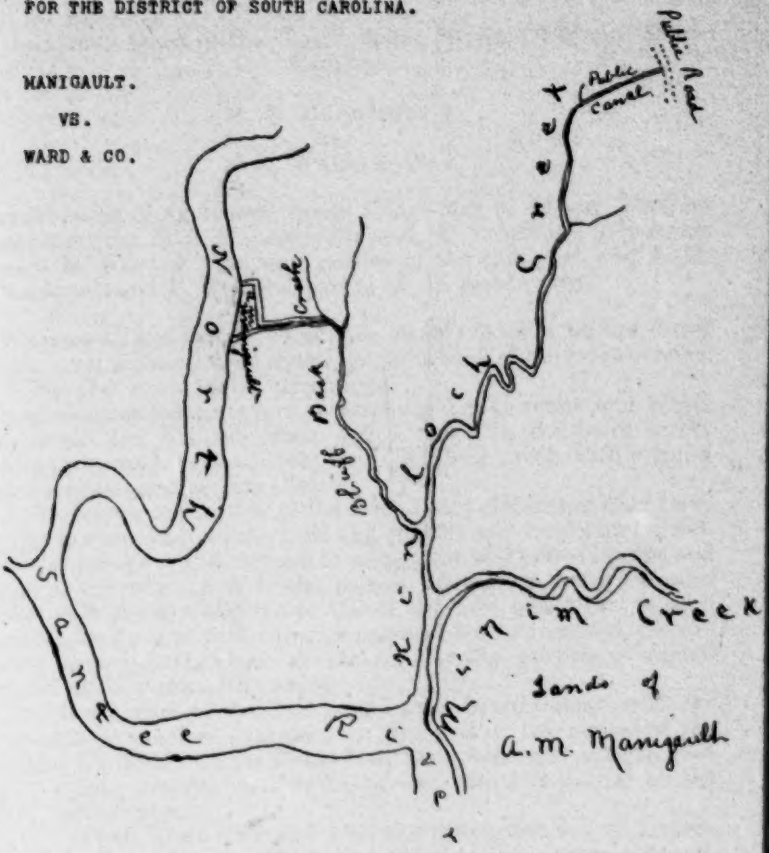
JULIAN MITCHELL, JR.,
[SEAL.] Notary Public for S. C.

(Here follows diagram marked page 11.)

EXHIBIT "A" TO BILL OF COMPLAINT.

IN THE UNITED STATES CIRCUIT COURT
FOR THE DISTRICT OF SOUTH CAROLINA.

MANIGAULT.
VS.
WARD & CO.



Land of A. M. Manigault bounded in red

No. 290
Manigault } p. 11.
Springs et al

12 EXHIBIT "B" TO BILL OF COMPLAINT.

In the Circuit Court of the United States for the District of South Carolina.

A. M. MANIGAULT
vs.
S. M. WARD & Co.

Memorandum of agreement made this — day of August, 1898, by and between St. J. M. Lachicotte and A. A. Springs, co-partners as S. M. Ward & Company, parties of the first part, and A. M. Manigault and F. W. Ford, parties of the second part.

Whereas all the parties hereto are owners of land on the North Santee river adjacent to or in the neighborhood of the creeks known as White Oak creek and Kinloch creek,

And whereas there are now in existence banks across said White Oak creek, and Kinloch creek, with a trunk in the bank across White Oak creek, and a bank across Kinloch creek, with a trunk and floodgate on each side thereof,

And whereas the parties of the second part claim that they have a right to keep open all the time and remove said banks and floodgate and trunks as obstructions to navigation and to free ingress and egress of the water, and to the parties themselves, using the said creeks as highways, and the parties of the first part object to such removal, and claim that the same should not be removed, the following agreement has been entered into for the purpose of adjusting and settling such differences.

Now the parties of the first part hereto, in consideration of the covenants hereinafter expressed on the part of the parties of the second part, do hereby for themselves, their heirs and assigns, covenant, promise and agree to and with the parties of the

13 second part.

First. That from and after the thirty-first day of December, 1898, the said parties of the second part, their agents, servants, and employees, shall have the right to open and keep open all or any part of the said banks and trunks over and across the said two creeks, and to remove all or any part of the banks and obstructions across the said creeks, so as entirely or to such extent as they may see fit—to free and clear both of said creeks, or either of them from all or any part of such obstructions, without any let, hindrance, objection, delay or molestation whatsoever, in act or procurance, by the parties of the first part, their servants, agents or employees.

Second. That the trunks and floodgate now existing shall be kept open and left open except when closed as hereinafter provided and set forth.

Third. That in case of the closing of the floodgate over Kinloch creek, at any time during the continuance of this agreement so as to prevent the ingress and egress through the same by the parties of the second part in their boats or flats, that then and in such case the parties of the second part, their servants, agents and employees, shall, during the time the said floodgate be closed, have the right to cross over the lands of the parties of the first part upon the banks, between said floodgate and the Bear Hill plantation of F. W. Ford, so as to obtain that access to the lands of the parties of the second part that they would otherwise have had by passage of a boat or flat through the said floodgates.

And the parties of the second part, for and in consideration of the covenants and agreements herein expressed on the part of the parties of the first part, do hereby covenant, promise and agree to and with the parties of the first part.

14 First. That they, the parties of the second part, will allow the said banks, trunks and floodgate to remain as they now are, until or after the thirty-first day of December, 1898.

Second. That they will agree to permit the said trunks and flood gate to be closed before said thirty-first of December, 1898, in the manner hereinafter specified.

And it is further mutually covenanted, promised and agreed by and between the said parties that the said trunks and floodgate shall remain open, free to the ingress and egress of the water, unless and in case of such extraordinary tides and freshets as may call for the closing of the same to save the crops of the parties hereto from damage; and in such case they shall only be closed with the mutual consent of the parties hereto, or the consent of one party of the first part and one party of the second part; and in case the parties hereto should not agree that the same be closed, then and in that case the parties of the first part, or one of them, shall select one arbitrator, and the parties of the second part, or one of them, shall select another arbitrator, who shall select a third; and the decision of a majority of such arbitrators shall determine whether the said trunks and floodgate shall be closed, and for how long they shall remain closed.

Witness the hands and seals of the said parties:

ST. J. M. LACHICOTTE. [L. S.]
A. A. SPRINGS. [L. S.]
A. M. MANIGAULT. [L. S.]
F. W. FORD. [L. S.]

Signed, sealed, and delivered in presence of—

——— ———.

(NOTE.—The words "trunk and a floodgate in the" the letter "s" in the word "trunks," and the words "and floodgate" on page 1, erased before execution. Also the word "and" interlined. Also the words "with a trunk and floodgate on each side thereof.")

15 Witness- as to signature of St. J. M. Lachicotte:

W. D. OLIVER.
S. W. ROUQUIER, JR.

As to A. A. Springs:

W. W. PYATT.
S. W. ROUQUIER, JR.

Witness- as to A. M. Manigault and F. W. Ford:

E. H. McCOLLOUGH.
J. M. PAGAN.

STATE OF SOUTH CAROLINA,
Oconee County.

Personally appeared E. H. McCollough, and being duly sworn, made oath that he saw the within named A. M. Manigault and F. W. Ford sign, seal and as their act and deed, deliver the within written deed; and that he, with J. M. Pagan, witnessed the execution thereof by said A. M. Manigault and F. W. Ford.

E. H. McCOLLOUGH.

Sworn to and subscribed before me, this October 2nd, A. D. 1901.

R. T. JAYNES,
Notary Public, S. C.

[SEAL.]

STATE OF SOUTH CAROLINA,
County of ——.

Personally appeared S. W. Rouquier, Jr., and being duly sworn, made oath that he saw the within named St. J. M. Lachicotte and A. A. Springs sign, seal and as their act and deed, deliver the within written deed; and that he, with W. D. Oliver witnessed the execution thereof, by St. J. M. Lachicotte, and that he, with M. W. Pyatt, witnessed the execution thereof by A. A. Springs.

S. W. ROUQUIER, JR.

Sworn to and subscribed before me, this October 5th, A. D. 1901.

F. L. WILLCOX, [L. S.]
Notary Public for S. C.

16 EXHIBIT "C" TO BILL OF COMPLAINT.

UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court. In Equity.

ARTHUR M. MANIGAULT, Complainant,
vs.
S. M. WARD & Co., Defendants.

EXHIBIT "C."

An Act to Authorize the Construction and Maintenance of a Dam Across Kinloch Creek, in Georgetown County.

Whereas, in order to drain certain low lands in the county of Georgetown, which lands are subject to overflow by reason of high tides and freshets in the Santee river, it has become necessary to construct a dam across Kinloch creek;

And whereas, said creek is situated entirely in Georgetown county, and the lands bordering on said stream are almost entirely owned or controlled by A. A. Springs and St. J. M. Lachicotte, copartners, in business under the firm name of S. M. Ward & Co.

And whereas, by reason of the drainage and protection of said lands from overflow, their taxable value will be greatly enhanced, and without the dam provided for in this bill a large part of the land bordering on said creek will eventually become abandoned and valueless, as some portions of it now are;

And whereas, it is the purpose of the said parties to construct a good and sufficient floodgate so as to allow the water to pass out of said creek;

And whereas, the erection of a dam across Kinloch creek is the only feasible and practicable scheme for the drainage of said lands

And whereas, in order to remove any doubt as to the authority of A. A. Springs and St. J. M. Lachicotte, copartners, doing business as S. M. Ward & Co., to erect, construct and maintain a dam across said "Kinloch creek" now

Be it enacted by the General Assembly of the State of South Carolina:

17 SECTION 1. That the right, power and privilege to construct, erect and maintain a dam across said Kinloch creek is hereby authorized, granted and given to said A. A. Springs and St. J. M. Lachicotte, copartners, doing business under the firm name of S. M. Ward & Co. their heirs and assigns and the survivors of them, or either of them: Provided, that the said A. A. Springs and St. J.

M. Lachicotte, copartners, doing business under the firm name of S. M. Ward & Co. shall be liable for all such damages as may be established in any court of competent jurisdiction by any land owner claiming that his land has been damaged by reason of the erection of said dam.

18 *Subpœna ad Respondendum.*

Filed March 4, 1903.

UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina.

The President of the United States of America to A. A. Springs and St. J. M. Lachicotte, co-partners in business under the firm name of S. M. Ward & Co.:

You are hereby strictly commanded and firmly enjoined that all manner of excuses being laid aside, you be and appear before the judges of the circuit court of the United States for the district of South Carolina, at Charleston on the sixth day of April, 1903, twenty days after the service thereof; then and there true and perfect answer to make, upon your corporal oath on the Holy Evangelists, to all such matters as shall be objected against you in the bill of complaint of Arthur M. Manigault.

And also, that you do, on the rules day next immediately after the day appointed and expressed, file, or cause to be filed, in the registry of said court, your plea, answer or demurrer, to the said bill of complaint.

Hereof fail not, under the pain of one hundred pounds.

Given under the seal of the said court.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States of America, at Charleston, in South Carolina district, aforesaid, the 4th day of March in the year of our Lord one thousand nine hundred and three, and in the one hundred and twenty-seventh year of the sovereignty and Independence of the United States of America.

MITCHELL & SMITH,
Complainant's Solicitors.

C. J. MURPHY,
[SEAL.] C. C. C. U. S., Dist. S. C.

19 Memorandum.

The defendants will take notice that they are required to enter their appearance in this suit, in the clerk's office of the circuit court of the United States for the district of South Carolina, on or before the first Monday of April 1903, otherwise the bill will be taken *pro confesso* against them.

Marshal's Return of Service.

UNITED STATES OF AMERICA,
District of South Carolina.

I hereby certify that on March 5, 1903, I served the within *subpœna ad re.* on A. A. Springs, personally, at Georgetown, S. C. and upon St. J. M. Lachicotte, personally, at Waverly Mills, S. C., by handing to and leaving with each of them a true and correct copy of said paper.

Charleston, S. C. March 6, 1903.

J. DUNCAN ADAMS,
U. S. Marshal,
By A. H. MOWRY, Deputy.

20 Appearance.

Filed April 2nd, 1903.

THE UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit. In Equity.

ARTHUR M. MANIGAULT, Complainant,
vs.
A. A. SPRINGS and ST. J. M. LACHICOTTE, Copartners in Business under the Firm Name of S. M. Ward & Co., Defendants.

To the clerk of the circuit court of the United States for the district of South Carolina:

Please enter my name as appearing for the defendants in the above entitled case.

THEODORE G. BARKER,
Solicitor for Defendants.

April 2nd, 1903.

21 Demurrer, Plea, and Answer.

Filed May 4, 1903.

UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina.

In the Circuit Court. In Equity.

ARTHUR M. MANIGAULT, Complainant,
vs.
A. A. SPRINGS and ST. J. M. LACHICOTTE, Copartners in Business under the Firm Name of S. M. Ward & Co., Defendants.

The joint and several demurrer, plea, and answer of A. A. Springs and St. J. M. Lachicotte, copartners in business under the firm name of S. M. Ward and Company, defendants, to the bill of complaint of A. M. Manigault, complainant.

Demurrer.

These defendants by protestation not confessing or acknowledging all or any of the matters and things in the said complainant's said bill contained to be true in such manner and form as the same are therein and thereby set forth and alleged, do demur to the said bill, and for causes of demurrer show

First. That it appears, by said complainant's own showing, that Frederick W. Ford is a necessary party to said bill inasmuch as the contract set up in the bill, Exhibit B, the obligation of which it is charged has been or is impaired by the act of the General Assembly of the State of South Carolina of March 3, 1903, is, on its face, a contract *netween* defendants A. A. Springs and St. J. M. Lachicotte, copartners as S. M. Ward & Co. parties of the first part and the complainant A. M. Manigault and F. W. Ford parties of the second part, jointly, and yet complainant relying (bill par. IV. par. V. pp. 2 and 3. par. VI. p. 4 par. VII. p. 5. par. VIII p. 6) upon said joint agreement under seal and deed of defendants has not made the said F. W. Ford, joint contractor, with him, in said agreement and deed, a party to the said bill.

Second. That the enacting of the act of the General Assembly
22 of the State of South Carolina of March 3, 1903, is not as alleged in par. VII. p. 5 of the bill under the Constitution of the United States a law impairing the contract and covenant entered into by the said defendants hereto in their agreement referred to in said bill—inasmuch as said act of assembly does not in law operate upon said alleged contract.

Third. That the damming of Kinloch creek and its consequent closing as a navigable water highway and the passage of the said act

by the General Assembly of the State of South Carolina is not an impairment of the obligation of any contract alleged (par. VIII pp. 5 and 6 of the bill) to have been entered into by complainant with the State of South Carolina at the time of his acquisition of the properties, viz: his plantation on Minim creek and his alleged mill site on Bluff back creek.

Fourth. That the navigability of Kinloch creek was not guaranteed to complainant by any contract made with him by the State of South Carolina when he acquired the properties referred to in the bill of complaint and the closing of Kinloch creek and the passage of said act of General Assembly is not the impairment of the obligation of a contract under the Constitution of the United States.

Fifth. That the damming of Kinloch creek and its consequent closing as a navigable water highway and the passage of said act by the General Assembly of the State of South Carolina is not (par. VIII, pp. 5 and 6 of the bill) a taking of the property of complainant without compensation therefor under the Constitution of the United States.

Sixth. That the damming of Kinloch creek and its consequent closing as a navigable water highway and the passage of said act of assembly of the State of South Carolina is not (par. VIII, pp. 5 and 6 of the bill) the depriving complainant of his property without due process of law in contravention of section I. article XIV of the Constitution of the United States.

Seventh. That the alleged violations of the provisions of
23 the Constitution and laws of the State of South Carolina (par. VII. par. VIII, pp. 5 and 6, par. IX, pp. 6 and 7, par. X p. 8 of the bill) by the closing of Kinloch creek and the passage of the act of the General Assembly of March 3, 1903, is a subject belonging exclusively to the jurisdiction of the legislative and judicial departments of the government of South Carolina and is not within the cognizance and jurisdiction of the courts of the United States.

Eighth. That section 34 article III of the constitution of South Carolina (par. IX, pp. 6 and 7 of the bill) applies to such roads or highways as are capable of being and are usually laid out, or opened and being so opened capable of being and are usually altered as such roads and does not apply to navigable streams within the control of the State sovereignty.

Ninth. That it was competent for the General Assembly of the State of South Carolina to forbid the introduction of and to refuse to entertain the bill granting to A. A. Springs and St. J. M. Lachicotte the authority to erect a dam across Kinloch creek for want of compliance with the provisions of section 31 of article III chapter 11 of the Code of Laws of South Carolina 1902 and not having forbidden the introduction of said bill and having entertained the same it was competent for the said General Assembly of 1903 to condone and waive the irregularities referred to in the bill of complaint (par. IX, p. 7 and 8 of the bill) and the said act is not null or void or in contravention of law.

Tenth. That these defendants as to the relief sought by the said bill for cause of demurrer show that the said complainant may have an effectual and complete remedy in a court of law.

Eleventh. And as to so much of said bill (Exhibit B. par. IV, pp. 2 and 3, par. V. pp. 3 and 4, par. VI, p. 4. par. VII p. 4) as refers to the contract or agreement or deed made in 1898 between defendants on the one part and complainant and F. W. Ford on the other part these defendants say that on its face said contract shows that it was without a good or valuable consideration which would entitle it to be enforced in a court of equity—and these defendants demur thereto.

24 Twelfth. That on its face said contract imposes on these defendants a restrictive covenant depriving them for all time of the advantageous use of their property by the protection of a dam across Kinloch creek and is oppressive and harsh in its contemplated operation upon defendants and its enforcement by injunction will be unjust and inequitable and defendants demur to the relief so sought in equity. And these defendants do demur to so much of said bill as is herein demurred to and these defendants humbly pray the judgment of this honorable court whether they ought to make any further answer to so much of said bill as is hereinbefore demurred to.

Pleas.

And these defendants not waiving their said several demurrers but wholly relying thereon, as to so much of the said bill as alleges that complainant is the owner in fee of valuable mill site on the Santee river or the waters of Bluff Back creek, a branch of Kinloch creek (par. II, p. 2) and as to so much of said bill as states that said ownership appears by the map or plan of the portions of said creek with the lands adjacent thereto annexed to the said bill as Exhibit "A" (par. II, p. 2) and as to so much of the said bill as alleges (par. V, pp. 3 & 4) that said mill site on Santee river could be used for the purposes of a rice mill or of a saw mill and that one of the main elements of the value of the same is that it has water connection with Bluff Back creek, and that the value of said mill site by reason of its accessibility through Kinloch creek depends upon said Kinloch creek being kept open and unobstructed; and as to so much of said bill (par. III, p. 2) as alleges that Kinloch creek as a navigable highway connects at one point with the main State road or highway leading down from the upper portion of the State down the Santee river. And as alleges that there is a public landing at the point at which Kinloch creek connects with said State road, so as to make a continuous highway from the same over the navigable waters of Kinloch creek to the main State road and thence to the upper country, And as to so much as alleges (par. V, pp. 3 & 4) that any dam or obstruction in Kinloch creek will prevent complainant from access to the said public landing on the State road if he so

desires from his plantation on Santee river through Kinloch creek,
And as to so much as alleges (par. V, p. 4) that such dam or
25 obstruction will prevent plaintiff from access to the rear
of his mill site on Santee river through Bluff Back creek,
And as to so much as alleges (par. V, p. 4) that this will entirely destroy the availability of said mill site for a saw mill, And as to so much of said bill as alleges (par. V, p. 4) that the erection of a dam across Kinloch creek, by preventing the inflow of the rising tide that passes from Santee river through Minim creek and which would otherwise have access and overflow over the whole of Kinloch creek and its branches will cause the water to fall back on Minim creek, so as to compel complainant to raise his banks to his great damage much exceeding two thousand dollars and as to so much of the said bill as alleges (par. VI, p. 4) that the damming and closing of said Kinloch creek by said act is attempted to be authorized and permitted for the mere private purposes and for the greater financial improvement of the private agricultural lands of the defendants hereto and is not authorized or attempted to be authorized for the purposes of improving navigation or for any public use or purpose whatsoever, And as to so much of said bill as alleges (par. VIII, p. 5) that the damming of Kinloch creek and its consequent closing as a navigable water highway is a destruction of part of the value of the said properties of complainant given to him at the time of his acquisition thereof by the constitution of the State and the passage of the said act by the General Assembly of the State of South Carolina is the taking of the property of complainant and the depriving of complainant of his property, And as to so much as alleges (par. VIII, p. 6) that complainant as the owner of his said mill site abutting on Bluff Back creek has as part of his private property the right to an unobstructed passage to and from his said property on and over the waters of Kinloch creek, And as to so much of the said bill as alleges that the — closing of Kinloch creek by the passage of said act, and the loss of access thereby to his said mill site, and the consequent damage to the lands of complainant is the taking of complainant's property without his consent, And as to so much of
26 said bill as alleges (par. XI, p. 8) that the erecting by defendants of a permanent dam and obstruction across Kinloch creek will at once put an end to complainant's use thereof and permanently injure and affect the value of his property irreparably and beyond the power of complainant to prevent and will deprive complainant of his property, these defendants plead thereto and to each and every of said allegations and for plea say: That it is true that complainant holds a deed from Dr. Francis L. Frost, the former owner, dated 4 October 1901 conveying to complainant in fee a tract of land on the Santee river known as a former mill site but that the land so conveyed to complainant lies within the boundaries of a previous deed of complainant to these defendants dated on the twenty ninth day of December 1891 by which complainant conveyed to S. M. Ward & Co. the Newland plantation bounding to the

south on the Santee river—under which deed S. M. Ward & Co. had legal possession and title in October 1901 when the deed of Frost to complainant was executed and delivered to complainant conveying to him the part of the land which had formerly been a mile site; that the subsequent title to the mill site portion so acquired by complainant in 1901 enured to defendants as grantees under complainant's former conveyance of Newland plantation bounding south on Santee river, by virtue of which defendants became and are the lawful owners as defendants are advised of the mill site tract or part of said land, and complainant is not the owner thereof. That said mill site is not valuable as alleged either for the purpose of a rice pounding mill or of a saw mill, that it does not lie on the waters of Bluff Back creek and has no water or other connection therewith. That the map or plan of the portions of said creek with the lands adjacent thereto annexed to the bill as Exhibit "A" is not a true representation of the lands of complainant or of the mill site on Santee river, inasmuch as there is no strip of land nor canal connecting said mill site with Bluff Back creek as is delineated on said alleged map or plan. That said mill site has no water connection with Bluff Back creek. That the value of said mill site does not by reason of its accessibility through
27 Kinloch creek depend upon said Kinloch creek being kept open and unobstructed. That Kinloch creek as a navigable highway does not connect at any point with the main State road ascribed in the bill or with any public road. That there is no public landing at any point on the public road with which Kinloch creek connects, that no continuous highway exists or has existed from a public road over the navigable waters of Kinloch creek, or from the same to the main State road and thence to the upper country. That no dam or obstruction in Kinloch creek will prevent complainant from access to said or any public landing from his plantation on Santee river through Kinloch creek or from access to the rear of his mill site on Santee river through Bluff Back creek, and such dam will not destroy or affect the availability of said mill site for a saw mill. That the erection of a dam across Kinloch creek will not, by preventing the inflow of the rising tide from the Santee river through Minim creek and which would otherwise overflow over the whole of Kinloch creek and its branches cause the water to fall back on Minim creek to any appreciable extent or compel complainant to raise his banks on Minim creek, or to his damage exceeding two thousand dollars or to any amount of damage whatever. That the damming and closing of Kinloch creek by the act of the General Assembly is authorized and permitted for the general welfare and the improvement of the agricultural lands of the State in proximity to the proposed dam and of the rice lands of other land owners on Kinloch creek besides those of the defendants and is not by said act attempted to be authorized or permitted for the mere private purposes and financial improvement of the private agricultural lands of the defendants hereto. That the damming of

Kinloch creek will not destroy or impair the value of any of the properties of complainant that no property of complainant will be thereby taken nor will complainant be deprived of any property. That the erection of said dam will in no wise injure or damage complainant or his property. That its non-erection will seriously damage these defendants.

All of which last mentioned matters and things these de-
28 fendants do plead in bar to so much of the said bill as is herein before pleaded to and these defendants humbly pray the judgment of this honorable court whether they ought to make any further answer to so much of said bill as is hereinbefore pleaded to. And these defendants not waiving their said several demurrers and plea, but wholly relying and insisting thereon, for answer to so much of the said bill as these defendants are advised is material or necessary for them to make answer unto, in aid of their said plea, answer and say, that the said contract set up in the complaint was entered into by these defendants under duress and apprehension, caused by the threat of complainant and the said F. W. Ford in August 1898, when the large and valuable rice crop of defendants estimated to be worth not less than thirty five thousand dollars had been planted and cultivated under the protection of a dam across Kinloch creek and was ready to be harvested, that they would force the removal of said dam, which, if done would have let in the freshet waters or high tides of the Santee river into and upon the rice fields of defendants and destroy their crop to the great damage and probable ruin of defendants. Defendants at the time when said contract was signed by them to save their crop had good reason to believe that on two occasions in 1898 previous to August, when the agreement was made, the complainant had caused tide water to be let in upon their planting lands, to their great loss and damage by the opening of trunks and letting in the water which flooded the plantations adjoining those of defendants and flowed over the line banks between defendants and the neighboring plantations.

ST. J. M. LACHICOTTE.
A. A. SPRINGS.

I hereby certify that aforesaid demurrer is in my opinion well founded in law and is not interposed for delay.

THEODORE G. BARKER,
Solicitor for Defendants.

29 STATE OF SOUTH CAROLINA, }
Georgetown County. }

Before me personally appeared St. J. M. Lachicotte and A. A. Springs and being duly sworn on oath say that the matter and things set forth in the foregoing plea and answer are true in so far

as they are alleged to be upon the knowledge of defendants and as to such as are stated to be on information and belief they believe them to be true, and that defendants' aforesaid demurrer and plea are not interposed for delay.

ST. J. M. LACHICOTTE.
A. A. SPRINGS.

Sworn to before me at Georgetown this second day of May A. D. 1903.

A. L. SMITH,
Clerk of Court.

[SEAL.]

30 Replication.

Filed May 23, 1903.

UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court. In Equity.

ARTHUR M. MANIGAULT, Complainant,
vs.
A. A. SPRINGS and ST. J. M. LACHICOTTE, Copartners in Business under the Firm Name of S. M. Ward & Company, Defendants.

The replication of Arthur M. Manigault, complainant, to the answer of the defendants, A. A. Springs and St. J. M. Lachicotte, copartners in business under the firm name of S. M. Ward & Co., defendants.

This repliant saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer herein filed on the 4th day of May 1903, for replication thereunto saith, that he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto; and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto — this repliant without this that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed, or denied is true; all of which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

MITCHELL & SMITH,
Solicitors for Complainant.

31 Notice Setting Down Demurrer for Argument.

Filed May 23, 1903.

UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court. In Equity.

ARTHUR M. MANIGAULT, Complainant,
vs.
A. A. SPRINGS and ST. J. M. LACHICOTTE, Copartners in Business under the Firm Name of S. M. Ward & Company, Defendants.

To Theodore G. Barker, Esq., solicitor for defendants:

Please take notice that on behalf of the complainant herein the demurrer filed in the above cause on behalf of the defendants on the 4th day of May 1903, is hereby set down for argument before the Honorable C. H. Simonton, circuit judge, on Monday 6th day of July, 1903, (the same being rules day) at the hour of 10 a. m. or as soon thereafter as counsel can be heard, unless some other time and place be set for the hearing thereof by the said circuit judge.

Charleston, S. C., 23rd May, 1903.

MITCHELL & SMITH,
Solicitors for Complainant.

Acceptance of Service.

CHARLESTON, S. C., May 23, 1903.

I hereby acknowledge service of within notice.

THEODORE G. BARKER.

32 Notice of Motion to Strike Pleas from File.

Filed May 23, 1903.

UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court. In Equity.

ARTHUR M. MANIGAULT, Complainant,
vs.
A. A. SPRINGS and ST. J. M. LACHICOTTE, Copartners in Business under the Firm Name of S. M. Ward & Company, Defendants.

To Theodore G. Barker, Esq., solicitor for defendants:

Please take notice that on the 1st day of June, 1903 (the same being rules day) at the hour of 10 a. m. or as soon thereafter as

counsel can be heard, the undersigned will on behalf of the complainant herein move that the pleas herein filed on behalf of the defendants on the 4th day of May 1903 be struck from the files on the following grounds, to wit:

1. That the said pleas are multifarious.
2. That more than one has been filed without leave of the court first had and obtained.
3. That the said pleas are irregular as involving matters that should be the subject matter of an answer.

MITCHELL & SMITH,
Solicitors for Complainant.

Charleston, S. C., 23rd May, 1903.

Acceptance of Service.

CHARLESTON, S. C., May 23, 1903.

I acknowledge service of within notice.
THEODORE G. BARKER.

33 Order for Hearing to be Had on Demurrer First and Postponing Hearing of Motion to Strike Out Pleas.

Filed March 1, 1904.

THE UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit. In Equity.

ARTHUR M. MANIGAULT
vs.
A. A. SPRINGS and ST. J. M. LACHICOTTE, Copartners in Business under the Firm Name of S. M. Ward & Company.

This case came up this day upon motion to strike the pleas from the files upon the grounds stated in the motion.

Upon examining the record it appears that there is a demurrer, plea and an answer filed in the same paper and all simultaneously. The motion having come up, counsel for the defendants objected on the ground that the argument upon the demurrer filed should be first heard. After hearing counsel for the motion to strike out the pleas, and counsel for the defendants in opposition, it is

Ordered, that the hearing be had upon the demurrer first, and the hearing on this motion to strike out the pleas be postponed until after the hearing on the demurrer.

CHARLES H. SIMONTON,
Circuit Judge.

1 March, 1904.

34 Order Sustaining Demurrer and Dismissing Bill.

Filed March 14, 1904.

THE UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit. In Equity.

ARTHUR M. MANIGAULT
vs.
A. A. SPRINGS and ST. JULIAN M. LACHICOTTE, Copartners in Business under the Firm Name of S. M. Ward & Co.

This case came on to be heard on bill and demurrer. After reading the pleadings and hearing counsel thereon, without passing upon the first ground of demurrer as it is not necessary in view of the opinion I entertain on the bill, it is

Ordered, adjudged and decreed, that all the other grounds of demurrer be sustained and the bill be dismissed.

14 March, 1904.

CHARLES H. SIMONTON,
Circuit Judge.

35 Petition for Appeal.

Filed May 4, 1904.

UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court. In Equity.

ARTHUR M. MANIGAULT, Complainant,
vs.
A. A. SPRINGS and ST. J. M. LACHICOTTE, Copartners in Business under the Firm Name of S. M. Ward & Company, Defendants.

To the honorable the judges of the circuit court of the United States for the district of South Carolina:

And now comes the petitioner Arthur M. Manigault, complainant in the above entitled cause, and shows that in the record and proceedings in this cause there are manifest errors, and respectfully petitions this honorable court that he may be allowed to appeal from the decree of this court made on the 14th day of March 1904, to the honorable the Supreme Court of the United States, and the

said petitioner doth hereby appeal from the said decree and hereto annexes his assignment of errors and exceptions to said decree, from which this appeal is asked.

MITCHELL & SMITH,
Solicitors for the Complainant, Appellant.

Charleston, S. C., 4th May, 1904.

36 Assignment of Errors.

Filed May 4, 1904.

UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court. In Equity.

ARTHUR M. MANIGAULT, Complainant,
vs.
A. A. SPRINGS and ST. J. M. LACHICOTTE, Copartners in Business under the Firm Name of S. M. Ward & Company, Defendants.

And now comes the petitioner the complainant Arthur M. Manigault, and assigns for error in the decree of this honorable court made and filed in this cause, on the 14th day of March, 1904, and from which decree an appeal has been prayed, as follows, to wit:

1. That the court erred in sustaining the demurrer herein and dismissing the bill.

2. That the court erred in not holding that the enacting of the statute of the General Assembly of the State of South Carolina, approved 3rd March 1903, annexed as Exhibit "C" to the bill of complaint, was the passing by the State of South Carolina of a law impairing the obligation of a contract by annulling or attempting to annul and avoid the contract and covenant entered into by the defendants herein, with the complainant, in and by their agreement under seal referred to in and annexed as Exhibit "B" to the bill of complaint herein, and that such statute of the State of South Carolina, was the passing of a law in contravention of the provisions of article I section 10 of the Constitution of the United States.

37 3. That the court erred in not holding that the provisions of the constitution of South Carolina declaring that all navigable waters should forever remain public highways was a right and privilege annexed to and constituting a part of the value of the lands and properties of the complainant, situated upon such navigable waters, and that the damming of Kinloch creek and its consequent closing as a navigable water highway, except for the purposes of the public health, the public welfare or the public safety, and after due compensation therefor, is a destruction of part of the value

of the property of the complainant given to him at the time of his acquisition thereof by the constitution and laws of the State of South Carolina; and the passage of the said statute by the General Assembly of the State of South Carolina was an impairment of the obligation of the contract so entered into by the complainant when he was permitted to acquire said property, and is the taking of the property of the complainant without compensation therefor, and the depriving of the complainant of his property without due process of law in contravention of section I of article XIV of the amendments to the Constitution of the United States.

4. That the court erred in not holding that the complainant as the owner of property abutting on a navigable stream, to wit, Kinloch creek, had as part of his private property, the right of riparian owner, to wit, the right of unobstructed passage to and from his said property on and over the waters of Kinloch creek, and that the closing of Kinloch creek by the passage of the said statute, and the loss of access thereby to the property of the complainant and the consequent damage to the lands of the complainant abutting on or contiguous to said Kinloch creek is the taking of the — complainant without his consent, and without compensation therefor, in contravention of the provisions of article I section 10 of the Constitution of the United States and of section I of article XIV of the amendments to the Constitution of the United States and of section 17 article I of the constitution of South Carolina.

38 5. That the court erred in not holding that the aforesaid statute passed by the State of South Carolina, approved March 3rd 1903, was a statute passed for the private purposes of the defendants and to release them from the obligation of their aforesaid contract with the complainant, and was not a statute passed in the exercise of any of the police powers of the State for the public health, the public welfare or the public safety, or for any public purpose soever.

6. That the court erred in not holding that the enactment of the aforesaid statute approved March 3rd 1903, by the General Assembly of the State of South Carolina, was the enacting of a local and special law, concerning the opening of highways and was in contravention of article III section 34 subdivision II of the constitution of the State of South Carolina.

7. That the court erred in not holding that the enactment of the aforesaid statute approved March 3rd 1903 by the General Assembly of South Carolina was the enacting of a local or special law and was in contravention of article III section 34—subdivision XI of the constitution of the State of South Carolina.

8. That the court erred in not holding that in and by sections 31 and 34 of article III, chap. II title 1 of the Code of Laws of South Carolina, 1902, and of sections 31 and 34 of article 3, chapter II title 1 of the Revised Statutes of South Carolina, 1903, it is declared that no bill for the granting of any privilege or immunity or for any other private purpose whatsoever should be introduced or enter-

tained in either house of the General Assembly, except by a petition to be signed by the person or persons desiring any such privilege or immunity, or private grant; of which petition all parties, the rights of whom shall be in anywise proposed to be affected shall have 60 days' notice of the presentation before the same is presented to the General Assembly, and further and additionally that notice of the intention of petitioners to make such application must
39 be published in the newspaper having the largest circulation in the county where the privilege or immunity is to be enjoyed, once a week, for at least three weeks, the first of which publications is to be made at least sixty days before such is presented, and that such requirements of the statutes of South Carolina constituted part of the rights to which private owners of property affected by such intended application or petition were entitled, and that the passage of the aforesaid statute of the 3rd March 1903, was in contravention of the said laws of the State of South Carolina, and was an impairment of the contract entered into by the complainant when he purchased and acquired the property referred to in the bill of complaint, and was the taking of his property without compensation, and without due process of law.

9. That the court should have overruled the demurrer and directed judgment for the defendant.

MITCHELL & SMITH,
Solicitors for Complainant-Appellant.

40 Order Allowing Appeal.

Filed May 4, 1904.

UNITED STATES OF AMERICA, }
District of South Carolina. }

In the Circuit Court. In Equity.

ARTHUR M. MANIGAULT, Complainant,
vs.
A. A. SPRINGS and ST. J. M. LACHICOTTE, Copartners in Business under the Firm Name of S. M. Ward & Company, Defendants.

The petitioner, the complainant Arthur M. Manigault, having appealed from the decree in this cause entered on the 14th day of March, 1904, and having duly filed his petition, for appeal with his assignment of errors to said decree,

Now, on consideration thereof, it is

Ordered, that the said appeal be allowed, and that a transcript of the record in said cause aforesaid be transmitted to the United States Supreme Court.

It is further ordered, that the said petitioner do enter into a bond in the sum of two hundred and fifty dollars conditioned that if the above named Arthur M. Manigault shall prosecute such appeal to effect, and answer for all damages and costs if he shall fail to make such appeal good, then such obligation to be void, otherwise to remain in full force and virtue.

Ordered further, that the said bond shall be filed within twenty days from the order of this court, and shall be approved by a judge or the clerk of this court.

WM. H. BRALWEY,
U. S. Judge.

May 4, 1904.

41 Appeal Bond and Approval.

Filed May 12, 1904.

UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court. In Equity.

ARTHUR M. MANIGAULT, Complainant,
vs.
A. A. SPRINGS and ST. J. M. LACHICOTTE, Copartners in Business under the Firm Name of S. M. Ward & Company, Defendants.

Know all men by these presents, that Arthur M. Manigault and American Bonding Company of Baltimore, are held and firmly bound unto C. J. Murphy, clerk of the circuit court of the United States for the district of South Carolina, in the sum of two hundred and fifty dollars ($250.00) to be paid to the said C. J. Murphy clerk of such United States circuit court for the district of South Carolina, his successors in office and assigns, for the payment of which well and truly to be made and done, they hereby bind themselves and each of their successors, executors and administrators or assigns jointly and severally, firmly, by these presents.

Sealed with the seals of the parties hereto, and dated this 12th day of May, in the year of our Lord one thousand nine hundred and four.

Whereas, the above named Arthur M. Manigault hath prosecuted an appeal to the Supreme Court of the United States from the decree rendered in the above entitled cause on the 14th day of March, 1904,

Now, therefore, the condition of this obligation is such that
42 if the above named Arthur M. Manigault shall prosecute said appeal to effect and answer for all damages and costs, if

he shall fail to make such appeal good, then this obligation to be void, otherwise to remain in full force and virtue.

A. M. MANIGAULT. [L. S.]
AMERICAN BONDING COMPANY
OF BALTIMORE, [SEAL.]
By T. MOULTRIE MORDECAI, Attorney in Fact.

Signed, sealed and delivered in the presence of:
Witness as to A. M. Manigault:

E. C. HASELDEN.
MATTHEW J. BLANCHE.

Approved as to form and sufficiency.

C. J. MURPHY,
[SEAL.] C. C. C. U. S., Dist. S. C.

May 2, 1904.

43 Citation.

UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court. In Equity.

ARTHUR M. MANIGAULT, Complainant,
vs.
A. A. SPRINGS and ST. J. M. LACHICOTTE, Copartners in Business under the Firm Name of S. M. Ward & Company, Defendants.

To A. A. Springs and St. J. M. Lachicotte, copartners in business under the firm name of S. M. Ward & Company, defendants above named, Greeting:

You and each of you are hereby cited and admonished to be and appear before the United States Supreme Court, to be holden at Washington, on the 3rd day of June next ensuing, pursuant to an appeal taken by Arthur M. Manigault from the decree of the circuit court of the United States for the district of South Carolina, rendered in the above entitled cause in said court in equity, wherein said Arthur M. Manigault is complainant and the said A. A. Springs and St. J. M. Lachicotte copartners in business under the firm name of S. M. Ward & Company are defendants; and you are commanded to show cause, if any there be, why such decree rendered against the complainant should not be corrected, and why speedy justice should not be done in that behalf.

Witness the Honorable William H. Brawley, judge of the district court of the United States for the district of South Carolina and as

such one of the judges of the circuit court of the United
44 States for such district this 4th day of May A. D. nineteen hundred and four.

WM. H. BRAWLEY,
U. S. Judge.

CHARLESTON, S. C., May 4, 1904.

I accept service of above citation.

THEODORE G. BARKER,
Solicitor for Defendants.

Filed in this office May 4 1904.

C. J. MURPHY,
C. C. C. U. S., Dist. S. C.

45 Clerk's Certificate.

UNITED STATES OF AMERICA, District of South Carolina, } *To wit:*

In the Circuit Court, Fourth Circuit. In Equity.

I, C. J. Murphy, clerk of the circuit court of the United States for the district of South Carolina, do hereby certify, that the foregoing record is a true and correct copy of all the records, proceedings and decree, constituting the record on appeal in the case of Arthur M. Manigault, complainant, against A. A. Springs and St. J. M. Lachicotte, copartners in business under the firm name of S. M. Ward & Co., defendants, rendered as aforesaid, together with all the proceedings had in the cause relating to the same.

Given under my hand and seal of said court, at clerk's office, in the city of Charleston, and district aforesaid, this 28th day of May, A. D. 1904.

Seal U. S. Circuit Court, District of So. Carolina.

C. J. MURPHY,
C. C. C. U. S., Dist. S. C.

Endorsed on cover: File No. 19,390. South Carolina C. C. U. S. Term No. 290. Arthur M. Manigault, appellant, *vs.* A. A. Springs & St. J. M. Lachicotte, copartners in business under the firm name of S. M. Ward and Company. Filed June 6", 1904. File No. 19,390.